IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1002 OF 2005

Dr.Jyoti Anant Bobe & Anr. ..Petitioners.

V/s.

M/s.Maruti Enclave co-operative
Housing Society Ltd. & Ors. ..Respondents.

Mr.C.J.Sawant, Sr.Advocate with Nitin Dhumal for petitioner.

Mr.P.P.Chavan for respondent No.1.

Ns.G.P.Mulekar, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 14, 2005.

P.C. :

1. Heard counsel for the parties.

2. The argument which is canvassed before this court amongst others is that neither the provisions of section 5,7 and 11 of the Maharashtra Ownership of Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 would apply to the fact situation of the present case as the petitioners are purchasers and not promoters. This provision applies as against promoter.

3. This argument, in my view can be effectively

answered even in proceeding by way of revision application before the Sessions Court against the order of the Magistrate issuing process in view of the recent decisions of this court in the case of **V.K.Jain V/s.Pratap V. Padode 2005(3) Mh.L.J.778 and** in unreported Judgment in the case of **Chetan R.Nagda & Ors V/s. N.D.Pawar & Ors in Cri.W.P. No.1023 of 2005 dated 8th December, 2005.** In my opinion, the petitioner may take recourse to remedy of revision before the Sessions Court, in which proceedings, all questions can be considered on its own merits in accordance with the law.

4. To facilitate petitioners to avail of the remedy of revision application, proceedings before the trial court shall not be precipitated for a period of four weeks from today. All questions on merits are left open.

5. In case, there is delay in filing Revision Application, Court will take into account the fact that the petitioners had first approached this Court, which period may be excused in computing delay.

6. Petition disposed of on the above terms.